



## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petition for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Docket No. MSHA-2022-0023 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2022-0023.
2. *Fax:* 202-693-9441.
3. *Email:* [petitioncomments@dol.gov](mailto:petitioncomments@dol.gov).
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

*Attention:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401.

Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), [Petitionsformodification@dol.gov](mailto:Petitionsformodification@dol.gov) (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

## **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

## **II. Petition for Modification**

Docket Number: M-2022-010-M

Petitioner: Nevada Gold Mines, LLC, 1655 Mountain City Highway, Elko, Nevada, 89801.

Mine: Cortez District-Underground Mine, MSHA ID No. 26-02573, located in Lander County, Nevada.

Regulation Affected: 30 CFR 57.11052(d), Refuge areas.

Modification Request: The petitioner requests a modification of 30 CFR 57.11052(d) to permit the use of sealed purified drinking water in lieu of providing potable water through waterlines in the existing refuge chambers and future refuge chambers and locations.

The petitioner states that:

(a) The mine is an underground portal gold mine with eight refuge chambers located throughout the underground portion of the mine. In the refuge areas, drinkable water is supplied via commercially purchased water in sealed pouches.

(b) Seven of the eight refuge chambers are MineARC refuge chambers and are made out of steel. One refuge chamber is built into the rock underground and is encased in shotcrete.

(c) Seven chambers are equipped for a maximum capacity of 16 miners each, and the remaining one chamber is equipped for a maximum capacity of 40 miners. The total capacity of the eight refuge chambers exceeds the normal work crew of approximately 75 miners underground on any shift.

(d) Each refuge chamber is provided with a waterline. The water flowing through these lines is not potable due to the configuration of the waterlines and the water source. Installing waterlines to provide potable drinking water to each refuge chamber is not feasible due to the lack of essential infrastructure.

(e) The waterlines are susceptible to damage during an emergency and under normal working conditions. The water supply could be cut off completely.

(f) In an emergency, there can be no guarantee of potable drinking water via the waterline for miners using the refuge area. Application of the standard could adversely impact the safety of the affected miners if they were to rely on waterlines running from the portal to the refuge chambers, as these lines are subject to interruption and are inherently less safe than sanitary sealed water pouches located inside the refuge chambers. Sealed water stored inside each refuge chamber ensures that affected miners will have sanitary drinking water available to them in an emergency.

(g) Seven of the refuge chambers at the mine are portable. Allowing the use of refuge chambers that do not have to be connected to waterlines provides greater flexibility in the location of the refuge chambers. Refuge chambers can be located in direct relation to where

miners are working and relocated quickly to working areas as needed for the protection of miners.

The petitioner proposes the following alternative method:

(a) Drinking water will be supplied via commercially purchased water in sealed containers.

(b) At a minimum, the refuge chamber will be supplied with 2.25 quarts of water per day per person for 36 hours. The total amount of water provided will vary depending on the maximum capacity of the refuge chamber. In a 16-person refuge chamber, a minimum of 52 liters of water will be provided. In the 40-person refuge chamber, a minimum of 128 liters of water will be provided.

(c) The water will have a maximum shelf life of 3.5 years. The operator will replace the existing water supply with fresh water before the water's expiration date. The condition and quantity of water will be confirmed by inspection on no less than a monthly basis.

(d) Written instructions for conservation of water will be provided with the refuge chamber supplies.

(e) All miners affected will receive training in the operation of the refuge chamber and will receive refresher training annually.

(f) The refuge chamber will be inspected monthly and documented by the Mine Manager or the Manager's designee.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

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Song-ae Aromie Noe,

Director,

Office of Standards, Regulations, and Variances.